

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	CS Docket No. 99-250
Amendment of Eligibility Requirements in)	
Part 78 Regarding 12 GHz Cable)	RM-9257
Television Relay Service)	

To: The Commission

PETITION FOR RECONSIDERATION

Susan L. Fox, Esq.
Vice President, Government Relations
THE WALT DISNEY COMPANY
1150 17th Street, N.W.
Suite 400
Washington, DC 20036
(202) 222-4780

Tom W. Davidson, Esq.
Natalie G. Roisman, Esq.
AKIN GUMP STRAUSS HAUER & FELD, LLP
1676 International Drive, Penthouse
McLean, VA 22102
(703) 891-7500

Attorneys for the Walt Disney Company and
ABC, Inc.

Henry L. Bauman, Esq.
Jack N. Goodman, Esq.
Ann W. Bobeck, Esq.
NAT'L ASSOCIATION OF
BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

Kelly Williams
Sr. Director of Engineering
NAT'L ASSOCIATION OF BROADCASTERS

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EXECUTIVE SUMMARY

The Walt Disney Company (“Disney”) and ABC, Inc. (collectively, “ABC”) and the National Association of Broadcasters (“NAB”) hereby request that the Federal Communications Commission (“Commission”) reconsider and reverse its determination in this proceeding that cable television relay service (“CARS”) operators may use, on a “secondary” basis, fifty megahertz of spectrum (13.20-13.25 GHz) allocated to the broadcast auxiliary service (“BAS”). Exclusive use of spectrum for BAS operations is critical for TV pickup video production, which is essential to the delivery of breaking news and emergency information, coverage of political and other public interest events, traffic reports, and broadcasts of indoor and outdoor professional sporting events. Permanent, fixed CARS operations generally are incompatible with itinerant TV pickup operations because once a CARS transmitter is in operation, the path or paths used for distribution, as well as areas around the paths, become unusable for other operations. TV pickup licensees seeking “primary” use of spectrum that is being used for CARS operations therefore must shut down such operations in order to ensure that TV pickup operations will be interference-free. Thus, authorization of CARS operations in this spectrum on a “secondary” basis effectively forecloses use of the band for TV pickup purposes.

Exclusive use of the 13.20-13.25 GHz band for TV pickup video production operations must be maintained because other spectrum available to BAS licensees for TV pickup video production is already severely limited. Without exclusive use of this spectrum, the ability of broadcasters to provide on-the-spot, up-to-the-minute news and information will be compromised. In addition, the inability to use the 13.20-13.25 GHz band for TV pickup operations will severely limit broadcasters’ ability to produce high-definition video programming

of sporting events, a result which is wholly inconsistent with the Commission's goal of transitioning fully and expeditiously to digital television ("DTV").

For these reasons, ABC and NAB seek to prohibit use of the BAS Exclusive Band by CARS licensees for fixed distribution purposes. ABC and NAB seek reconsideration of the Order only to the extent that the Order authorizes CARS users to operate in the 13.20-13.25 GHz band, and are raising no objection to the Commission's other actions in the Order.

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PETITION FOR RECONSIDERATION

I. INTRODUCTION

The Walt Disney Company (“Disney”) and ABC, Inc. (“ABC”) and the National Association of Broadcasters (“NAB”),¹ pursuant to Section 1.106 of the rules of the Federal Communications Commission (“Commission”), 47 C.F.R. § 1.106, hereby request that the Commission reconsider and reverse in part its Report and Order (“Order”) amending Part 78 of the Commission’s rules to expand the class of entities eligible for licenses in the Cable Television Relay Service (“CARS”).² In addition to expanding the eligibility for CARS licenses in the 12.70-13.20 GHz band (the “BAS/CARS Shared 13 GHz Band”), the Order permits multichannel video program distributors (“MVPDs”), including private cable operators (“PCOs”) and other MVPDs previously ineligible for CARS licenses, to use fifty megahertz of spectrum (13.20-13.25 GHz) allocated to the broadcast auxiliary service (“BAS”). The Commission’s

¹ NAB is a nonprofit, incorporated association of television and radio stations and broadcast networks which serves and represents the American broadcast industry.

determination that CARS licensees may use this spectrum as “secondary users” does not adequately address the concerns raised by broadcasters in this proceeding that the 13.20-13.25 GHz band (the “BAS Exclusive Band”) is critical for “TV pickup” purposes, i.e., for the transmission of video and audio from a temporary location outside a studio back to the studio, or to an intermediate location for relay back to the studio.

The Order does not afford sufficient protection for TV pickup operations in the BAS Exclusive Band because this primary/secondary service distinction is meaningless in practice. Therefore, the Order effectively forecloses use of the BAS Exclusive Band for TV pickup purposes. Use of the BAS Exclusive Band for TV pickup video production operations is essential because, as further described herein, other spectrum available to BAS licensees for TV pickup video production is already severely limited. In addition, exclusive use of channels of substantial size, such as the two 25 MHz channels in the BAS Exclusive Band, is necessary for the production of high-definition video programming such as live coverage of professional sports. The inability to use the BAS Exclusive Band for TV pickup operations will severely limit broadcasters’ ability to produce high-definition video programming, which is inconsistent with the Commission’s goal of transitioning fully and expeditiously to digital television (“DTV”). For these reasons, as further explained herein, ABC and NAB (hereinafter, the “Broadcasters”) therefore seek to prohibit use of the BAS Exclusive Band by CARS licensees for fixed distribution purposes.

The Broadcasters seek reconsideration of the Order only to the extent that the Order authorizes CARS users to operate in the BAS Exclusive Band, and are raising no objection to the

² Amendment of Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service, Report and Order, CS Docket No. 99-250 (rel. May 21, 2002).

Commission's other actions in the Order, which are intended to expand the services of cable operators and other MVPDs.³

II. **BACKGROUND**

A. TV pickup operations are an essential component of local and network television service, including the delivery of breaking news and emergency information, and political and sporting events

TV pickup operations, which use BAS spectrum, are critical to the provision of high-quality local and network television service. In particular, BAS spectrum is essential for the delivery of breaking news and emergency information, coverage of regional and national political and other public interest events, and daily spot stories and traffic reports. BAS spectrum also is used for major events, such as political conventions and parades, and sporting events, including indoor and outdoor professional sports, auto racing, horse racing, marathons and other long-distance races, and the Olympics.⁴ However, only where sufficient spectrum is available, such as the 25 MHz channels in the BAS Exclusive Band, can broadcasters produce such sporting events in high-definition.

Most notably, TV pickup operations using BAS spectrum are critical in emergency situations for news coverage and live reporting that must be disseminated promptly to the public. For example, in case of an impending hurricane, tornado, flood, wildfire, or other dangerous

³ ABC and NAB are parties to the proceeding and have standing to challenge the Order pursuant to Section 1.106(b)(1) of the Commission's rules, 47 C.F.R. § 1.106(b)(1). See Comments of the Walt Disney Company (filed Aug. 16, 1999) ("Disney Comments"); Comments of the National Association of Broadcasters (filed Aug. 16, 1999) ("NAB Comments"); Order at Appendix A (list of commenters).

⁴ As Disney indicated in its comments in this proceeding, the availability of and access to BAS spectrum is essential for broadcasters to produce local and network programming because "high quality coverage of live events, particularly sports, constitutes an important portion of

weather condition, broadcasters move from location to location to cover the development of the event. When such a major emergency occurs, most broadcasters transition to immediate and continuous news coverage, and are able to do so primarily through the use of TV pickup operations for video production that use BAS spectrum.

In order to appreciate the distinction between the spectrum needs of TV pickup operations and the needs of other services operating in the same bands or proposed to operate in the same bands, it must be understood that for TV pickup purposes, BAS spectrum is used for production, rather than distribution, of video programming. As further explained below, there is only limited spectrum available for video production. Moreover, this limited spectrum is shared among all producers of video—including broadcasters, cable networks, CARS users, local television transmission service (“LTTS”), and multichannel multipoint distribution systems (“MMDS”). In order to ensure the high-quality and prompt production of video programming of substantial interest to the public, sufficient spectrum allocated to BAS must be exclusively available for TV pickup video production use.

B. BAS spectrum suitable for video production is endangered or substantially restricted in virtually all of the bands in which it is authorized

The Commission’s determination in the Order that CARS users may operate on a “secondary” basis in the BAS Exclusive Band is of substantial concern because BAS spectrum suitable for video production already is endangered, or already substantially restricted, in virtually all of the other bands in which it is authorized. For obvious reasons, permanent, fixed transmitters are not appropriate to produce the type of programming produced in TV pickup

[broadcasters’] programming every week and is integral” to television networks. See Disney

operations. Such remote, up-to-the-minute, non-studio video production can be accomplished only where BAS spectrum is allocated for itinerant use, which is limited to the 2 GHz, 2.5 GHz, 6.4 GHz, 7 GHz, and the 12.7-13.25 GHz bands. In addition to the BAS Exclusive Band at issue in the instant proceeding, the spectrum available to BAS for itinerant use and, therefore, video production is threatened or restricted in each of these bands. For example, the BAS channels in the 2 GHz band, which are being narrowed in bandwidth to clear spectrum for the mobile-satellite service (“MSS”),⁵ will not support the high data rate required for high-definition video production. Use of spectrum in the 2.5 GHz band for BAS purposes, including TV pickup operations, is secondary, which requires broadcasters to accept interference from industrial, science, and medical (“ISM”) devices. In the 6.4 GHz band, BAS is co-primary and must share spectrum with a number of operators, including LTTS and private operational fixed service (“POFS”) licensees. Another band in which itinerant BAS operations are permitted, the 7 GHz band, has become overcrowded as a result of fixed point-to-point microwave stations such as studio-to-transmitter links that have moved from 2 GHz to 7 GHz. On top of these restrictions, the BAS bands at 2, 2.5, and 7 GHz are saturated in all major metropolitan areas. The Commission indicated in the Order that BAS users also have access to the 18 GHz band.⁶ However, the 18 GHz band cannot be used for video production because, under the Commission’s rules, itinerant BAS transmitters cannot be licensed in that band.

The problems created by the lack of BAS spectrum available for video production are heightened by two factors. First, TV pickup video production is only possible where channels

Comments at 1.

⁵ See Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, *Second Report and Order and Second Memorandum and Order*, 15 FCC Rcd 12315, ¶¶ 11-13, 18-74 (2000).

⁶ Order at ¶ 23.

are not already in use, i.e., simultaneous usage of a particular channel is possible only where the paths do not interfere with each other. Therefore, in any band not exclusively allocated for BAS, TV pickup licensees must search for and utilize only channels either unused on the needed paths, or in use, but not able to cause or receive interference to or from the temporary BAS operation. TV pickup equipment must be sufficiently agile to locate channels throughout the entire band and operate on any such available channel(s). Second, video production requires more than one channel, or channel diversity, for multiple events, multiple points of view, or anything more than the simplest item to be produced. A producer cannot switch to a particular video feed, or move among various points of view, without being able to view each feed (which requires an individual channel) separately. Therefore, if a CARS licensee in a particular geographic area occupies all channels in the BAS Exclusive Band, then the band becomes unusable for TV pickup operations over all affected paths. Because of the scarcity of BAS spectrum available and the restrictions on BAS use in a number of bands, it is essential that the BAS Exclusive Band be maintained exclusively for BAS, in order to allow for TV pickup operations.

III. THE COMMISSION SHOULD RECONSIDER AND REVERSE ITS DETERMINATION THAT CARS USERS MAY OPERATE IN THE BAS EXCLUSIVE BAND

As demonstrated above, spectrum available for BAS use, particularly spectrum available for exclusive BAS use, is diminishing rapidly. In order to effectively deliver the high-quality major event, breaking news, and emergency coverage demanded by today's consumers, BAS must have exclusive use in several bands. Moreover, exclusive BAS channels of substantial size are required for high-definition video production. Notwithstanding these needs, in various proceedings, the Commission gradually has reduced and restricted the operations of BAS

licensees. Most recently, in the Order, the Commission determined that CARS users could operate on a “secondary” basis in the BAS Exclusive Band. This primary/secondary distinction is meaningless in practice because of the substantial likelihood that the supposed “secondary” CARS operators intend to use the spectrum full-time, which is incompatible with itinerant, and often emergency, TV pickup operations. Because the Broadcasters are not aware of, and the Commission has not put forth, any technical solution for spectrum sharing and primary/secondary coordination in the BAS Exclusive Band, the Order effectively stripped BAS licensees of their ability to operate in the BAS Exclusive Band.

A. The primary/secondary distinction is ill-suited to the unique qualities of TV pickup operations and CARS operations

The primary/secondary distinction which the Commission adopted for the BAS Exclusive Band does not contemplate the unique production video demands of the BAS, the potential harm caused to BAS operations by CARS operators, or the experiences to date in which BAS already has been hampered and restricted by CARS operations in use of the BAS/CARS Shared 13 GHz Band. The spectrum needs of TV pickup operations are unique because production video is done on an itinerant basis, with transmitters moving from site to site as needed. For major events, production may be needed in a city where it previously has not been needed. For example, a BAS licensee might need primary use of several channels in International Falls, Minnesota today, while tomorrow, that same licensee will need primary use of several channels in Duluth. Thus, the “primary” use of spectrum for TV pickup operations differs from the primary use of spectrum by fixed service microwave stations, which broadcast from permanent, fixed locations.

Because of their itinerant nature, TV pickup operations are particularly susceptible to interference from CARS distribution operations. CARS distribution utilizes permanent, fixed

microwave transmitters to relay channels through the air, rather than via cable. These channels are in use for distribution over fixed paths 24 hours a day, seven days a week, and each of the two 25 MHz BAS channels in the BAS Exclusive Band may represent a number of television channels being distributed by a cable operator or other MVPD through CARS operations. CARS licensees likely will attempt to use all channels in the band unless and until they are told to do otherwise, and once a CARS transmitter is in operation, the path or paths used for distribution, as well as areas around the paths, become unusable for other operations. BAS licensees seeking “primary” use of spectrum in the BAS Exclusive Band that is being used for CARS operations therefore must shut down such CARS operations in order to ensure that TV pickup operations will be interference-free. For the “primary” service licensees to be forced to communicate with the “secondary” licensees each time a “primary” licensee wants to use the spectrum in which it is supposed to be primary renders the primary/secondary distinction meaningless for BAS licensees. Moreover, since CARS stations often run unattended, contacting a CARS licensee with advance notice will be difficult, and in emergency situations, may be nearly impossible.

Further, the primary/secondary distinction also is meaningless in practice for CARS licensees and their subscribers, because the “secondary” concept suggests that the “secondary” licensee can operate continuously and simultaneously with the “primary” licensee. In fact, there is no way for CARS licensees to operate continuously in the BAS Exclusive Band if the primary/secondary distinction is to have any meaning, because CARS licensees cannot engage in fixed distribution operations simultaneously with BAS licensees engaged in TV pickup video production without causing interference. CARS licensees, if authorized to do so, are likely to utilize the BAS Exclusive Band on a full-time basis. They intend to use the BAS Exclusive Band to create part of their cable system infrastructure, and must have permanent operations in

order to do so. As the Commission indicated in the Order, the BAS Exclusive Band would be used by CARS licensees to provide additional video channels on a permanent basis.⁷

However, if BAS licensees exercise their rights as the “primary” service, CARS operators will be forced to shut off one or more channels within the band at any given time, often on short notice, thereby causing interruption in their service to MVPD subscribers. The PCO OpTel, Inc. (“OpTel”) aptly described the detriment to a “secondary” CARS service earlier in this proceeding in concluding that “secondary status is no status. No rational operator will invest . . . in microwave facilities and contract to provide services to subscribers using those facilities when the operator may, at any time and without warning, be required to shut down the facilities because they are causing interference.”⁸ The Broadcasters therefore submit that the primary/secondary distinction cannot work in this band with these services, and will benefit neither the “primary” nor the “secondary” service.

B. There are no technical solutions to allow spectrum sharing between BAS and CARS licensees in the BAS Exclusive Band

The Commission stated that “solutions, both technical and non-technical” exist to enable sharing of the BAS Exclusive Band.⁹ However, the Commission did not offer, nor are the Broadcasters aware of, any technical solutions that will allow spectrum sharing in the BAS Exclusive Band if an MVPD is using all the spectrum in the band (ostensibly on a secondary basis), and a breaking news story occurs and a broadcaster needs to use that spectrum. Certainly,

⁷ See Order at ¶¶ 21-24 (“[U]se of the frequencies from 13.20 to 13.25 GHz would provide [PCOs] with more channels in the [12.7-13.25 GHz band] to be more competitive with cable systems.”).

⁸ Ex parte letter, OpTel, Inc., CS Docket No. 99-250 (filed Sept. 27, 1999) (“OpTel Ex Parte”).

⁹ Order at ¶ 24.

the issue of spectrum sharing will arise in such emergencies, and broadcasters will be forced to either endure impermissible interference that will compromise their signal or to cut off CARS operations to prevent such interference. However, even in situations where advance notice is available, such as for major political conventions or sporting events, there is no technical solution that will alleviate interference in order to allow BAS licensees to provide high-quality remote coverage simultaneously with a PCO or other MVPD using all 550 MHz of CARS spectrum (including 50 MHz in the BAS Exclusive Band) for delivery of video programming. For these reasons, the Broadcasters submit that the Commission should reconsider the Order and determine that use of the BAS Exclusive Band, even on a “secondary” basis, will unnecessarily and unfairly compromise TV pickup operations.

IV. IF THE COMMISSION DOES NOT PROHIBIT CARS OPERATION IN THE BAS EXCLUSIVE BAND, THE COMMISSION SHOULD CLARIFY ITS REQUIREMENTS WITH RESPECT TO THE INTERACTION BETWEEN CARS LICENSEES AND BAS LICENSEES IN THE BAND

The Broadcasters believe that, upon reconsideration, the Commission will determine that use of the BAS Exclusive Band by CARS users unnecessarily threatens the use of BAS in that band, and, therefore, is unwarranted. However, if the Commission declines to reverse itself on this issue, the Broadcasters request that the Commission clarify its requirements with respect to the interaction among BAS and CARS licensees in the BAS Exclusive Band. The Commission has determined that CARS users may use the band as “secondary users,” i.e., that “CARS stations must accept interference from and not cause interference to existing and future BAS users.”¹⁰ According to the Commission, secondary use by CARS licensees “should afford

¹⁰ Order at ¶ 24.

adequate protection for BAS ENG.”¹¹ If, upon reconsideration, the Commission determines that these conclusions are correct, the Commission must clarify how to implement the primary/secondary distinction, in order to ensure that BAS licensees maintain primary status and are not relegated to secondary status by reason of the way in which the primary/secondary distinction is implemented as a practical matter.

As explained above, use of the entire band over a particular path by a CARS licensee effectively forecloses use of any portion of that band over or near that path for BAS. Because such primary use by broadcasters is inconsistent with the continuous use of spectrum by MVPDs, the Commission must clarify that MVPDs using this spectrum must anticipate that there will be times, most unplanned, when they cannot provide CARS service on one or both of the two BAS channels in the BAS Exclusive Band.

The Commission also should require MVPDs operating CARS in the BAS Exclusive Band to implement an appropriate mechanism for turning off their service in that band immediately upon receiving notice from the primary BAS licensees to do so. In that connection, CARS users in the BAS Exclusive Band must be required to provide a 24-hour contact person to respond to broadcasters’ assertion of primary use of any channel(s) in the band. The Commission also should clarify the appropriate procedure for resolution of conflicts that inevitably will develop from the sharing of the BAS Exclusive Band.

The Broadcasters do not believe that the primary/secondary distinction can work in this band for these services. However, to the extent the Commission declines to reverse itself on this issue, the Broadcasters urge the Commission to articulate clear and strong rules to ensure that TV pickup operations in the BAS Exclusive Band are not compromised.

¹¹ Id.

V. CONCLUSION

For the foregoing reasons, the Broadcasters respectfully request that the Commission reconsider and reverse the Order to the extent the Order authorizes CARS users to operate in the BAS Exclusive Band. Specifically, the Broadcasters request that the Commission determine that CARS users may not operate in the BAS Exclusive Band. In the alternative, the Broadcasters request that the Commission clarify the steps that must be taken by CARS users in this band to ensure that their operations do not interfere with the production and distribution of high-quality breaking news and major event coverage to television viewers.

Respectfully submitted,

/s/ Susan L. Fox

Susan L. Fox, Esq.
Vice President, Government Relations
THE WALT DISNEY COMPANY
1150 17th Street, N.W.
Suite 400
Washington, DC 20036
(202) 222-4780

/s/ Tom W. Davidson

Tom W. Davidson, Esq.
Natalie G. Roisman, Esq.
AKIN GUMP STRAUSS HAUER & FELD, LLP
1676 International Drive, Penthouse
McLean, VA 22102
(703) 891-7500

Attorneys for the Walt Disney Company and
ABC, Inc.

/s/ Henry L. Bauman

Henry L. Bauman, Esq.
Jack N. Goodman, Esq.
Ann W. Bobeck, Esq.
NAT'L ASSOCIATION OF
BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

/s/ Kelly Williams

Kelly Williams
Sr. Director of Engineering
NAT'L ASSOCIATION OF BROADCASTERS

Dated: July 29, 2002

CERTIFICATE OF SERVICE

I, Judie Johnson, hereby certify that copies of the foregoing Petition for Reconsideration have been served this 29th day of July, 2002, by first class United States Mail, postage prepaid, on the following:

Pantelis Michalopoulos
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Counsel for EchoStar Satellite Corporation

Stephen E. Coran
Manatt Phelps & Phillips LLP
1501 M Street NW
Washington, DC 20005
Counsel for KaStar Satellite Communications Corp., KaStarcom. World Satellite, LLC and @Contact, LLC

Paul J. Sinderbrand
Wilkinson Barker Knauer, LLP
2300 N Street, NW, Suite 700
Washington, DC 20037-1128
Counsel for The Wireless Communications Association International, Inc.

Daniel L. Brenner
Senior Vice President, Law and Regulatory Policy
National Cable & Telecommunications Association
1724 Massachusetts Avenue, NW
Washington, DC 20036-1903

Henry Goldberg
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, NW
Washington, DC 20036
Counsel for OpTel, Inc.

Eliot J. Greenwald
James N. Moskowitz
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for RCN Telecom Services, Inc.

Phillip L. Spector
Jeffrey H. Olson
Diane C. Gaylor
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, NW, Suite 1300
Washington, DC 20036
Counsel for SkyBridge, L.L.C.

Christopher D. Imlay
Booth, Freret, Imlay & Tepper
5101 Wisconsin Avenue, NW, Suite 307
Washington, DC 200176
Counsel for Society of Broadcast Engineers, Inc.

Jay C. Keithley
Rikke K. Davis
Bracewell & Patterson
1850 M Street, NW, Suite 1100
Washington, DC 20036
Counsel for Sprint Corporation

Aaron I. Fleischman
Arthur H. Harding
Matthew D. Emmer
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, NW, Suite 600
Washington, DC 20036
Counsel for Time Warner Cable

William W. Perkins
Principal Engineer
COMSEARCH
2002 Edmund Halley Drive
Reston, VA 20191

/s/ Judie Johnson